

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

ALEXANDER GONZALES,
Petitioner

vs

Case No. 1:04-CV-208
(Dlott, J.; Hogan, M.J.)

JEFFREY WOLFE, WARDEN,
Respondent

REPORT AND RECOMMENDATION

This habeas corpus action brought pro se pursuant to 28 U.S.C. § 2254 is before the Court on petitioner's motion for summary judgment. (Doc. 8). It is hereby RECOMMENDED that the summary judgment motion be DENIED. Habeas corpus petitions are generally decided on the record, without an evidentiary hearing, in chronological order from the oldest to most recently filed. Because motions for summary judgment in habeas corpus proceedings usually require the same record-based review of the merits of the petitioner's grounds for relief, they ordinarily should be considered at the time the case is ripe for disposition based upon the order in which petition was filed. Petitioner has not provided any justification for taking his case out of chronological order for consideration of the merits of his claims at this time. It is noted, however, that denial of the motion at this time will not preclude the Court from considering the arguments asserted by petitioner in support of his summary judgment motion upon final adjudication of the merits of his claims for relief.

Date: 1/25/2006
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s/Timothy S. Hogan
Timothy S. Hogan
United States Magistrate Judge

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NOTICE

Attached hereto is a Report and Recommendation issued by the Honorable Timothy S. Hogan, United States Magistrate Judge, in the above-entitled habeas corpus action. Pursuant to Fed. R. Civ. P. 72(b), which may be applied in this action under Rules 1 and 11 of the Rules Governing Section 2254 Cases in the United States District Courts, 28 U.S.C. foll. § 2254, any party may object to the Magistrate Judge's Report and Recommendation within ten (10) days after being served with a copy thereof. Such party shall file with the Clerk of Court and serve on all other parties written objections to the Report and Recommendation, specifically identifying the portion(s) of the proposed findings, recommendations, or report objected to, together with a memorandum of law setting forth the basis for such objection(s). Any response by an opposing party to the written objections shall be filed within ten (10) days after the opposing party has been served with the objections. *See* Fed. R. Civ. P. 72(b). A party's failure to make objections in accordance with the procedure outlined above may result in a forfeiture of his rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).